IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 3 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME (GIFT) TAX

Versus

BHARATIDEVI SARABHAI

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Appearance:

MR BB Naik for Petitioner

MR RK PATEL for Respondent

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CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 18/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

1. In this reference at the instance of the revenue, the following questions have been referred to us for the assessment year 1974-75 :-

(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the order passed by the Commissioner of Gift Tax under section 24(2) of the Act, was not legal and valid ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the order passed by the Commissioner of Gift Tax under section 24(2) of the Act was not sustainable on the ground that the power of appointment was not exercised and the release of life interest in the Trust was not made in the relevant previous year ?

2. We have heard, Mr.B. B. Naik, learned counsel for the revenue and Mr.R.K.Patel, learned counsel for respondent.

3. The Commissioner of Gift Tax, Gujarat exercised his power under Section 24(2) of the Gift Tax Act (The "Act" for brevity) in respect of assessment year 1974-75. The respondent assessee had exercised power of appointment in respect of a portion of the corpus of certain trusts in favour of certain other trusts and had released the life interest therein. However, the assessee claimed exemption from gift tax on the ground that the transaction was not exigible to gift tax. The Commissioner of Gift-Tax held the transaction as transfer of property under section 2(xxiv)(c) of the Act. The assessee went in appeal before the Tribunal which followed its decision dated 27th August, 1982. in the case of Geeta S. Mayor (ITR No.25/81). In the aforesaid decision dated 27th August, 1982, the Tribunal had considered the relevant provisions of the Act and held that the power of appointment was exercised in the previous year relating to the assessment year 1974-75. Otherwise, also the Tribunal held that release of life interest in favour of the certain other trusts was in accordance with the provisions of the Act applicable for the assessment year. The amendment to the provisions of section 4(1)(e) of the Act was made by Finance Act No.2 of 1980 and, therefore, the said amended provision would not apply to the transaction, since the amendment was prospective. The Tribunal relied on the decision of this Court in the case of Smt.Ansuyaben reported in 133 ITR 168 and also the decision of the Bombay High Court in the

case of C.G.T. v/s. Mrs. Jer Mavis Lubimoff reported in (1978) 114 ITR 90.

4. At the hearing of this reference the learned counsel for the respondent points out that the decision in C.G.T. City I v/s. Mrs. Jer Mavis Lubmoff (Supra) has been confirmed by the Supreme Court wherein the Apex Court has held that in unilateral transaction where the beneficiary surrenders his life interest in the part of property of the trust and enables the other beneficiary to derive the title earlier, there is no transaction exigible to tax within the meaning of the Gift Tax Act.

5. In view of the above decisions of the Apex Court as well as this Court, we hold that the Tribunal was right in law coming to the conclusion that the order of the Commissioner of Gift Tax under section 24(2) of the Gift Tax Act was not legal and valid. The said order was not sustainable on the ground that the power of appointment was not exercised and the release of life interest in the trust was not made in the previous year.
6. We accordingly answer both the questions in the affirmative i.e. in favour of the assessee and against the revenue.

7. This reference is accordingly disposed of with no order as to costs.

(J.M.Panchal,J.)

(M.S.Shah,J.)

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